

would rewrite the claims in independent form they would be allowed. Subject to the Examiner's consent, applicant's attorney will leave the rewriting of these claims in independent form pending the Examiner's consideration of the base claims from which they depend which will be discussed subsequently in these remarks. Of course, if the Examiner persists in the rejection of those base claims, applicant's attorney will place the above-listed dependent claims into independent form to secure their allowance.

Claims 1-3, 5, 7, 8, 9, are all rejected as being anticipated by Diamantopoulos. Applicant's attorney respectfully requests reconsideration of these claims in view of the fact that claim 1 is allowable over Diamantopoulos and claims 2, 3, 5, 7, 8, and 9 all depend from claim 1 and are therefore allowable for the same reason as is claim 1, which will now be presented. Claim 1 is directed to a device which includes an applicator that is equipped with "at least one pulsed first light source". It is that one first light source, a semiconductor diode, which emits light of different wavelengths of approximately 600, 900, and 1,200 nanometers in response to the output pulses from the generator. Thus the at least one semiconductor diode is capable of emitting light at three different wavelengths depending upon the pulses being generated by the generator. This is in sharp contrast to the Diamantopoulos patent wherein an array of semiconductor lasers is provided, at least one of which is capable of generating radiation of relatively short wavelength and one of which is capable of generating light of a medium wavelength and one of which is capable of generating light of still a greater wavelength. But none of these three semiconductor lasers is capable of varying the wavelength of the radiation emitted thereby on the basis of the pulses from the generator. It is the generator that controls the wavelength of the radiation emitted by "one first light source".

This is not the case in Diamantopoulos. It takes an array of light sources to perform such a function. Accordingly, it is respectfully submitted that claim 1 is clearly patentable over Diamantopoulos and should be allowed.

In view of the allowability of claim 1, it is respectfully submitted to the Examiner that claims 2, 3, 5, 7, 8, and 9 are all patentable over Diamantopoulos for the same reasons as presented above with respect to claim 1.

The Examiner further rejects claims 30-32, 34, and 36-38 as being anticipated by Diamantopoulos. Turning first to claim 30, claim 30 also calls for a device in which there is "one pulse first light source which is capable of emitting light of approximately 600, 900 and 1200 nanometers in response to the pulses of a generator. Thus the variety of pulses is all produced by a single laser diode, not by an array three or more laser diodes, as required by Diamantopoulos. Accordingly, claim 30 is not anticipated by Diamantopoulos and should be allowed. Claims 31, 32, 34, 36-38 all depend directly or indirectly from claim 30 and are respectfully submitted to be allowable for the same reasons as presented above with respect to claim 30.

Turning now to the Examiner's rejection of claims 13 and 17. The Examiner states that these claims are unpatentable as being obvious over Diamantopoulos in view of applicant's admission in the application that radiation treatments have been known. But the rejection of claim 13 is predicated on the Examiner's assertion that the light source of Diamantopoulos is the structure of the light source in claim 13. It is respectfully submitted that the Examiner errs in this contention since the light source employed in the method of claim 13 is specifically stated to be the light source of claim 1. Applicant's attorney has already demonstrated that the light source of claim 1 is not anticipated by Diamantopoulos. Accordingly claim 13 is not

obvious over Diamantopoulos and should be allowed. Claim 17, which depends indirectly from claim 13 is believed to be allowable for the same reasons as claim 13.

The Examiner rejects claim 42 as being obvious Diamantopoulos in view of Applicant's alleged admissions in the background section of the application. But as was true with respect to claim 13, claim 42 describes a method of using the device set forth in claim 30, a device that has already been demonstrated to be patentable over Diamantopoulos. Accordingly, claim 42 is not obvious over Diamantopoulos and should be allowed. Claim 46 which depends from claim 42 is believed to be patentable for the same reasons as presented herein with respect to claim 42.

Turning our attention now to claims 14-16, the Examiner rejects these claims as being unpatentable for the same reasons as claims 13 and 17 further in view of Meserol. It is respectfully submitted that this combination of references fails to render claim 14-16 obvious in light of the fact that Diamantopoulos utterly fails to teach the device of claim 14, which is the device of claim 1. Accordingly it is respectfully submitted that claims 14-16 are patentable and should be allowed.

Claims 43-45 are also rejected on a combination of Diamantopoulos and Meserol. However, claims 43-45 all depend from claim 30 which defines the structure of the device being used in the method of these three claims. Since the device of claim 30 is patentably distinct from the device of Diamantopoulos, it is respectfully submitted that claims 43-45 are clearly patentable and should be allowed.

Claims 18 and 19 are rejected as being obvious over Diamantopoulos further in view of Vogel. As was true with regard to claims 14-16, claims 18 and 19 all depend from claim 1 in that the device being used to perform the method is a device that is patentably distinct from

the Diamantopoulos device. That being the case it is respectfully submitted that claims 18 and 19 are patentable and should be allowed.

The Examiner rejects claims 47 and 48 on Diamantopoulos in view of Vogel. It is respectfully submitted that in view of the patentably distinct device that is performing the method of claims 47 and 48 the combination of Diamantopoulos and Vogel do not render the claim methods obvious and they should be allowed.

The Examiner rejects claim 20 and 21 as being obvious over a combination of Diamantopoulos and Chen. Claims 20 and 21 are specifically limited to performing the method claim therein with a device as set forth in claim 13. It has already been demonstrated that the device by which the method is performed is patentably distinct from the Diamantopoulos device thereby rendering claims 20 and 21 non-obvious and patentable.

The Examiner likewise rejects claims 49 and 50 on a combination of Diamantopoulos and Chen. But claims 49 and 50 all depend from claim 30 which requires the use of a device that has been demonstrated herein as being patentably distinct from Diamantopoulos. Thus, method claims 49 and 50 are not obvious and should be allowed.

Reconsideration and allowance of all claims herein are respectfully requested. As previously stated, if the Examiner persists in his rejection of allowable claims 4, 6, 10-12, 22-29, 33, 35, 39-41 and 51-58 because he maintains his rejection of the base claims from which they depend, then to the extent that this might occur, the applicant's attorney assures the Examiner that he will amend these dependent claims to put them in independent form.

It is believed that no fees or charges are required at this time in connection with the present application; however, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,
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Dated: February 25, 2003